

THE FEDERAL ELECTION COMMISSION

OCT -6 PM 4:31

In the Matter of

CELA

MUR 6806

Dana Ferguson

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY  
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act has occurred, to make no reason to believe findings. The Office of General Counsel has determined that MUR 6806 should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, the Office of General Counsel recommends that the Commission find no reason to believe that Respondent Dana Ferguson ("Ferguson") violated the Act or underlying Commission regulations.<sup>1</sup>

<sup>1</sup> The EPS rating information is as follows: Complaint Filed: April 10, 2014. Response Filed: September 8, 2015. No campaign committee was ever established.

1-800-418-1279

1           The Complaint alleges that Ferguson filed a Statement of Candidacy with the Federal  
2   Election Commission on March 3, 2014. *See* Compl. at 1; *see also* FEC Form 2, attached. The  
3   Complaint asserts that as of April 10, 2014, Ferguson had not filed a Statement of Organization,  
4   or FEC Form 1, for the “Ferguson for Congress Election Campaign” or any campaign  
5   committee.<sup>2</sup> *Id.* For this failure, the Complaint seeks an enforcement action and administrative  
6   fine.

7           In his Response, Ferguson states that he started his campaign “with virtually no money”  
8   and that his research led him to believe that he was under no obligation to file a Statement of  
9   Organization until he had spent or collected \$5,000 in campaign contributions. Resp. at 1. He  
10   explains that he collected no money while campaigning and was not planning to collect any  
11   money until he had obtained the required number of signatures to be placed on the ballot. *Id.*  
12   Furthermore, he states that since he did not reach the required number of signatures and did not  
13   collect any money, he was not required to file a Statement of Organization (FEC Form 1). *Id.*

14           Under the Act and Commission Regulations, an individual who becomes a candidate  
15   must file a Statement of Candidacy, or FEC Form 2, designating his or her principal campaign  
16   committee within 15 days after becoming a candidate. 52 U.S.C. § 30102(e)(1); 11 C.F.R.  
17   § 101.1(a). An individual becomes a candidate for federal office when he or she receives  
18   contributions or makes expenditures in excess of \$5,000. 52 U.S.C. § 30101(2); 11 C.F.R.  
19   § 100.3. The Commission also requires that the candidate’s principal committee file a Statement  
20   of Organization, or FEC Form 1, within 10 days after designation as a candidate. 52 U.S.C.  
21   § 30103(a); 11 C.F.R. § 102.1(a).

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<sup>2</sup>           The Complaint does not cite to any specific regulation, but filing a FEC Statement of Organization (Form 1) within 10 days of becoming a candidate is required under 11 C.F.R. § 102.1(a).

1 Here, the Complaint relies exclusively on the filing of the candidate's FEC Form 2 as a  
2 basis for concluding that Ferguson was required to file a FEC Form 1. However, the Complaint  
3 does not allege, nor is there any indication or facts to suggest, that Ferguson received  
4 contributions or made expenditures exceeding \$5,000. Thus, there is insufficient information  
5 contained in the record to conclude that Ferguson became a "candidate" under the Act or  
6 Commission regulations and, therefore, was required to file a Statement of Organization (FEC  
7 Form 1).

8 Accordingly, the Office of General Counsel recommends that the Commission find no  
9 reason to believe that Dana Ferguson violated 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(a).  
10 The Office of General Counsel also recommends that the Commission approve the attached  
11 Factual and Legal Analysis and close the file.

12 **RECOMMENDATIONS.**

- 13 1. Find no reason to believe that Dana Ferguson<sup>3</sup> violated 52 U.S.C. § 30103(a) and 11  
14 C.F.R. § 102.1(a);  
15  
16 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and  
17  
18 3. Close the file.

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20 Daniel A. Petalas  
21 Acting General Counsel


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23  
24 10/16/15  
25 Date

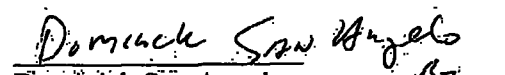
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28  
29 BY:

  
Gregory R. Baker  
Deputy General Counsel

<sup>3</sup> There was no "Ferguson for Congress Election Campaign" committee registered with the Commission and, therefore, the Office has not made any recommendations as to its disposition in this matter.

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Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination  
& Legal Administration

  
Dominick San Angelo  
Extern  
Complaints Examination  
& Legal Administration

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